

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Fidelity National Title Insurance Company,)	
)	C/A No.: 3:11-cv-1848-JFA
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
Beth Elayne Bernstein,)	
Bernstein and Bernstein, LLC,)	
and B&B Attorneys, LLC,)	
)	
Defendants.)	
)	

This matter comes before the court pursuant to the defendants’ motion to compel (ECF No. 42) and the plaintiff’s motion for leave to file an amended expert designation (ECF No. 55). Defendants’ filed the motion to compel seeking production of emails sent by Robert Baker, Claims Counsel and Assistant Vice President for Fidelity National Title Group, Inc. The Court heard oral argument on the motion to compel on June 1, 2012, and took the matter under advisement pending an *in camera* review of the emails. Since that time, plaintiff has requested leave to amend its expert designations and name Robert Baker as an expert.

The court hereby grants the defendants’ motion to compel and grants the plaintiff’s motion to amend its expert designation. When a party names its attorney as an expert, courts have deemed that the party waives the attorney–client privilege because it puts that attorney’s opinion at issue. *See Dion Nationwide Mut. Ins. Co.*, 185 F.R.D. 288, 294–95 (D. Mont. 1998); *Multiform Dessicants, Inc. v. Stanhope Products*

Co., Inc., 930 F. Supp. 45, 47 (W.D.N.Y. 1996). Because the plaintiff seeks to name Baker as an expert, it has waived the attorney–client privilege as to the emails. The court will allow the late designation, but the plaintiff must produce the emails. The court has also reviewed the emails and finds no other reason that the emails should not be turned over.

IT IS SO ORDERED.

June 13, 2012
Columbia, South Carolina

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge